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Criminal accountability of United Nations officials and experts on mission

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to paragraphs 16 and 17 of General Assembly resolution 67/88. Section II contains information received from Governments on the extent to which jurisdiction, in particular over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, is established under their national laws. Section III provides information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Sections IV and V relate to information on the activities within the Secretariat.

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I. Introduction

1. In its resolution 67/88, the General Assembly requested the Secretary-General to report on the implementation of the resolution, in particular with respect to its paragraphs 3, 5 and 9, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat.

2. By a note verbale dated 4 January 2013, the Secretary-General drew the attention of all States to that resolution and requested them to submit relevant information.

3. The present report provides information on efforts undertaken in that regard. Sections II and III concern activities and information received relating to the criminal accountability of United Nations officials and experts on mission, as required under paragraphs 3 to 5, 9 and 15 of resolution 67/88. Sections IV and V of the report relate to activities undertaken within the Secretariat in the implementation of paragraphs 6, 7 and 9 to 14 of the resolution, focusing in particular on information regarding the bringing of credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters related thereto. The present report should be read together with previous reports of the Secretary-General under this item (A/63/260 and Add.1, A/64/183 and Add.1, A/65/185, A/66/174 and Add.1 and A/67/213). Attention is also drawn to the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/67/766) (see in particular paras. 37 and 49).

II. Establishment of jurisdiction over crimes of a serious nature

Egypt

4. Egypt stated that pursuant to articles 3 and 4 of its Criminal Code, any Egyptian who perpetrates abroad an act that is considered a felony or a misdemeanour under that Code is liable to punishment in accordance with the provisions thereof, provided that:

(a) The perpetrator of the criminal conduct has returned to Egyptian territory;

(b) That act is punishable under the laws of the State in which it was perpetrated;

(c) He or she has neither been acquitted by a foreign court nor been found guilty and completed the sentence imposed.

5. Egypt emphasized that the application of its Criminal Code to United Nations officials and experts on mission must be in compliance with the relevant provisions of the Convention on the Privileges and Immunities of the United Nations of 1946.

Greece

6. Greece reiterated its previous comments contained in paragraphs 18 to 20 of document A/63/260. Greece stated that for purposes of the extraterritorial

application of the provisions of articles 6 to 8 of the Greek Penal Code, in general stateless persons and foreigners are regarded similarly. Though not applicable to the crimes listed under article 8 (providing for universal jurisdiction), pursuant to article 9, paragraph 1, the institution of criminal proceedings for acts committed abroad is precluded if:

(a) The accused was tried abroad and acquitted or, if convicted, has served his or her sentence in full;

(b) According to foreign law, prosecution of the act has been time barred or the inflicted sanction has been time barred or pardoned;

(c) According to foreign law, for the act to be prosecuted the victim is required to file a criminal complaint, and such complaint has not been filed or has been revoked.

7. In addition, article 2 of Law 3948/2011 (Official Gazette, vol. A, No. 71), on the adjustment of domestic law to the provisions of the Rome Statute of the International Criminal Court, provides that the provisions of this Law are applicable to both nationals and non-nationals for all acts enumerated in articles 7 to 15 (i.e. genocide, crimes against humanity, war crimes, violation of the duty of supervision, omission to report a crime), provided that they have been committed:

(a) In the territory of the Greek State or on board Greek vessels or aircraft, wherever they are present, unless they are subject to foreign legislation according to international law;

(b) Abroad, by Greek nationals or foreigners who acquired Greek nationality after the commission of the act;

(c) Abroad, against the Greek State or Greek nationals.

Lebanon

8. Lebanon recognized the applicability of the Convention on the Privileges and Immunities of the United Nations, in particular article VI, section 23, and the role of the Secretary-General in waiving immunity. It stated that Lebanon may therefore try United Nations officials and experts on mission if they commit an act that is considered a crime under Lebanese law.

9. The Agreement concerning the Headquarters of the United Nations Economic and Social Commission for Western Asia does not preclude the exercise of criminal jurisdiction over United Nations staff and experts on mission in accordance with Lebanese laws. Lebanon noted that these individuals are therefore not exempt from the consequences of criminal acts committed at their duty station, or penalized without legal grounds or due process under the laws of the host country.

Oman

10. Oman affirmed that its Penal Code, issued by royal decree, is capable of establishing jurisdiction over serious crimes committed by nationals of Oman working for the United Nations in their work function. Under article 10 of the Code, Omani law is applicable to every Omani national, whether committing, instigating

or acting as an accomplice to a crime (felony or misdemeanour) punishable under Omani law, committed outside the Omani territory, unless he or she was tried abroad and, in case of condemnation, the sentence was executed, or if the crime or the sentence was dropped according to general or private amnesty, or if the charges were dropped. Oman stated that the matter remained within its jurisdiction even if the defendant lost Omani citizenship or acquired it after the crime was committed, but in this case, the crime must be one that is punishable by at least three years' imprisonment. If Omani law is different from the law of the State where the crime was committed, the difference will be taken into account in favour of the defendant.

Qatar

11. Qatar recalled the information contained in paragraph 16 of document A/66/174 (see also A/65/185, para. 35, and A/63/260, para. 30) and emphasized the participation of Qatar in the United Nations Interim Force in Lebanon, in which no violations or crimes were registered against its nationals.

Sweden

12. Sweden recalled the information contained in paragraph 24 of document A/64/183.

III. Cooperation between States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions

Finland

13. Finland noted that Finnish military observers were subject to training through legal classes, including on the criminal responsibility of military observers under national law, international law and the law of the host country; military, war and other crimes; and information on procedures after crimes nave been committed. The criminal responsibility of Finnish military or civilian crisis management personnel under Finnish law is stressed, including when they are immune from the jurisdiction of the national courts of the State where they are operating. Training is also provided on gender issues, including on issues related to human trafficking, prostitution and the protection of victims.

Qatar

14. Qatar recalled the information contained in paragraph 76 of document A/65/185 (see also A/66/174, para. 51).

Sweden

15. Sweden stated that its judicial assistance to and cooperation with other States were governed by numerous bilateral and multilateral agreements.

IV. Bringing credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters related thereto

16. In paragraphs 9 to 14, 16 and 17 of its resolution 67/88, the General Assembly urged Member States to provide information to the Secretary-General, requested the Secretary-General to provide certain information to the Assembly and requested the United Nations to take certain measures concerning the issue of criminal accountability of officials and experts on mission..

Referrals in relation to officials or experts on mission

17. The request in paragraph 9 of resolution 67/88 is similar to that made by the Assembly in paragraph 9 of its resolutions 66/93 (see A/67/213), 65/20 (see A/66/174), 64/110 (see A/65/185), 63/119 (see A/64/183) and 62/63 (see A/63/260).

18. The information provided in the present report relates to the period from 1 July 2012 to 30 June 2013. During the reporting period, the Office of Legal Affairs referred to States of nationality the cases of nine United Nations officials for investigation and possible prosecution. Of those cases, three concerned allegations of fraudulent conduct and misappropriation of funds, and each of the rest concerned allegations of misuse of information and communications technology resources, misappropriation of funds, irregularities and improper actions regarding the recruitment of individual contractors, education grant fraud, assault of a United Nations official, and receipt of payments by a vendor while involved in procurement functions, respectively.

Requests for indication of status and assistance that may be provided by the Secretariat

19. The Office of Legal Affairs requested the States to which cases were referred during the reporting period to keep the United Nations informed of any action taken by national authorities in relation to such cases. As at the date of preparation of the present report, three States to which referrals were made had contacted the Office of Legal Affairs to note that the matter had been raised with relevant officials. The Office of Legal Affairs remains ready to assist with all referrals made.

20. Details of earlier requests by the Secretariat for information from States on how they were handling cases previously referred to them are contained in the previous reports of the Secretary-General on the subject (see A/64/183, para. 63; A/65/185, paras. 85-86; A/66/174, paras. 62-63; and A/67/213, paras. 36-37).

Possible use by States exercising jurisdiction of information from United Nations investigations

21. In paragraph 11 of its resolution 67/88, the General Assembly requested the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by United Nations officials or experts on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations. In the same vein, in paragraph 13 of that resolution, the Assembly urged the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States.

22. In that regard, it is important to recall that the legal framework within which the referrals are made by the United Nations and the role of the Secretary-General have been outlined previously (see A/63/260, sect. IV).

23. The United Nations cooperates with law enforcement and judicial authorities of relevant Member States in accordance with its rights and obligations under the Convention on the Privileges and Immunities of the United Nations of 1946, as well as other relevant international agreements and applicable legal principles. Accordingly, the Organization will disclose documents and/or information and waive immunity on a case-by-case basis where, in the opinion of the Secretary-General, immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. Consequently, information obtained by the Organization may be provided to the relevant authorities, and documents may be shared, subject to consideration of confidentiality and privileges and immunities. Documents may be redacted where necessary. It should be noted that, since the United Nations does not have any criminal investigative or prosecutorial jurisdiction, the use of any documents or information provided by the United Nations, including their admissibility in any legal proceedings, is a matter for determination by the relevant judicial authorities to which such documents or information have been provided.

Protection of United Nations officials and experts on mission from retaliation

24. In paragraph 12 of its resolution 67/88, the General Assembly encouraged the United Nations, should allegations against United Nations officials or experts on mission be determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission.

25. Moreover, the General Assembly, in paragraph 14 of the same resolution, emphasized that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission.

26. In this regard, United Nations officials who report misconduct by other United Nations officials or experts on mission are protected against retaliation under the staff regulations, rules and relevant administrative issuances, in particular, the

Secretary-General's bulletin entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations" (ST/SGB/2005/21), which was issued with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations. In addition, it should be noted that staff members may appeal any retaliatory measure through the internal justice system.

V. Other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training

27. The Department of Peacekeeping Operations and the Department of Field Support, with the assistance of conduct and discipline teams in place in peacekeeping and special political missions supported by the Department of Field Support, continued to implement the United Nations three-pronged strategy to address all forms of misconduct, in particular sexual exploitation and abuse, through the prevention of misconduct, the enforcement of United Nations standards of conduct, and remedial action. Awareness-raising activities, in particular predeployment and induction training programmes provided to personnel serving in field missions, continue to emphasize the obligation of all United Nations personnel to observe the laws of the host State, as well as possible consequences in terms of accountability should United Nations personnel fail to do so.